

AMENDMENTS

1963—Pub. L. 88-232 substituted “bylaws” for “articles of association”.

1959—Pub. L. 86-230 provided that when the day fixed for the regular annual meeting of the shareholders falls on a legal holiday, the meeting shall be held on the next following banking day and authorized election of directors to be held within sixty days of a fixed day upon ten days’ notice to the shareholders by first-class mail instead of upon thirty days’ notice in newspaper and at a date designated in the articles or bylaws or by the shareholders.

§ 76. President of bank as member of board; chairman of board

The president of the bank shall be a member of the board and shall be the chairman thereof, but the board may designate a director in lieu of the president to be chairman of the board, who shall perform such duties as may be designated by the board.

(R.S. § 5150; Feb. 25, 1927, ch. 191, § 6, 44 Stat. 1228.)

CODIFICATION

R.S. § 5150 derived from act June 3, 1864, ch. 106, § 9, 13 Stat. 102, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1927—Act Feb. 25, 1927, amended section generally. Prior to amendment, section read as follows: “One of the directors, to be chosen by the board, shall be president of the board.”

§ 77. Repealed. Pub. L. 89-695, title II, § 207, Oct. 16, 1966, 80 Stat. 1055

Section, act June 16, 1933, ch. 89, § 30, 48 Stat. 193, provided authority for removal of directors or officers of national banks, District banks, or State member banks for continued violations of law or for continued unsafe or unsound practices in conducting the business of such banks.

CODIFICATION

Section 401 of Pub. L. 89-695, Oct. 16, 1966, 80 Stat. 1056, which provided for reenactment of this section effective upon expiration of the period ending at the close of June 30, 1972, was repealed by Pub. L. 91-609, title IX, § 908, Dec. 31, 1970, 84 Stat. 1811.

**CONDITIONS GOVERNING EMPLOYMENT OF PERSONNEL
NOT REPEALED, MODIFIED, OR AFFECTED**

Nothing contained in section 207 of Pub. L. 89-695 repealing this section to be construed as repealing, modifying, or affecting section 1829 of this title, see section 206 of Pub. L. 89-695, set out as a note under section 1813 of this title.

§ 78. Repealed. Pub. L. 106-102, title I, § 101(b), Nov. 12, 1999, 113 Stat. 1341

Section, acts June 16, 1933, ch. 89, § 32, 48 Stat. 194; Aug. 23, 1935, ch. 614, § 307, 49 Stat. 709, related to certain persons excluded from serving as officers, directors, or employees of member banks.

EFFECTIVE DATE OF REPEAL

Repeal effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106-102, set out as an Effective Date of 1999 Amendment note under section 24 of this title.

**SUBCHAPTER IV—REGULATION OF THE
BANKING BUSINESS; POWERS AND DUTIES OF NATIONAL BANKS**

§ 81. Place of business

The general business of each national banking association shall be transacted in the place specified in its organization certificate and in the branch or branches, if any, established or maintained by it in accordance with the provisions of section 36 of this title.

(R.S. § 5190; Feb. 25, 1927, ch. 191, § 8, 44 Stat. 1229.)

CODIFICATION

R.S. § 5190 derived from act June 3, 1864, ch. 106, § 8, 13 Stat. 101, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1927—Act Feb. 25, 1927, among other changes, inserted “and in the branch or branches, if any, established or maintained by it in accordance with the provisions of section 36 of this title”.

§ 82. Repealed. Pub. L. 97-320, title IV, § 402, Oct. 15, 1982, 96 Stat. 1510

Section, R.S. § 5202; Dec. 23, 1913, ch. 6, § 13 (par.), 38 Stat. 264; Sept. 7, 1916, ch. 461, 39 Stat. 753; Apr. 5, 1918, ch. 45, § 20, 40 Stat. 512; Oct. 22, 1919, ch. 79, § 2, 41 Stat. 297; Mar. 4, 1923, ch. 252, title V, § 504, 42 Stat. 1481; Feb. 25, 1927, ch. 191, § 11, 44 Stat. 1231; Jan. 22, 1932, ch. 8, § 5, formerly § 6, 47 Stat. 8, renumbered and amended June 30, 1947, ch. 166, title I, § 1, 61 Stat. 202; May 20, 1933, ch. 35, § 2, 48 Stat. 73; June 19, 1934, ch. 653, § 2, 48 Stat. 1107; Sept. 8, 1959, Pub. L. 86-230, § 10, 73 Stat. 458; Sept. 9, 1959, Pub. L. 86-251, § 2, 73 Stat. 488; July 24, 1970, Pub. L. 91-351, title II, § 201(b), 84 Stat. 451; Jan. 4, 1975, Pub. L. 93-646, § 11, 88 Stat. 2337, provided that no national banking association could at any time be indebted, or in any way liable, to an amount exceeding the amount of its capital stock at such time actually paid in and remaining undiminished by losses or otherwise, plus 50 percent of the amount of its unimpaired surplus fund, except on account of demands of the nature following: notes of circulation; moneys deposited with or collected by the association; bills of exchange or drafts drawn against money actually on deposit to the credit of the association, or due thereto; liabilities to the stockholders of the association for dividends and reserve profits; liabilities incurred under the provisions of the Federal Reserve Act; liabilities incurred under the provisions of the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.]; liabilities created by the indorsement of accepted bills of exchange payable abroad actually owned by the indorsing bank and discounted at home or abroad; liabilities incurred under the provisions of sections 1031 to 1033 of this title; liabilities incurred on account of loans made with the express approval of the Comptroller of the Currency under former section 84(9) of this title; liabilities incurred under the provisions of section 352a of this title; liabilities incurred in connection with sales of mortgages, or participations therein, to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and liabilities incurred in borrowing from the Export-Import Bank of the United States.

§ 83. Loans by bank on its own stock

(a) General prohibition

No national bank shall make any loan or discount on the security of the shares of its own capital stock.

(b) Exclusion

For purposes of this section, a national bank shall not be deemed to be making a loan or dis-

count on the security of the shares of its own capital stock if it acquires the stock to prevent loss upon a debt previously contracted for in good faith.

(R.S. §5201; Pub. L. 106-569, title XII, §1207(a), Dec. 27, 2000, 114 Stat. 3034.)

CODIFICATION

R.S. §5201 derived from act June 3, 1864, ch. 106, §35, 13 Stat. 110, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

2000—Pub. L. 106-569 amended section catchline and text generally. Prior to amendment, text read as follows: “No association shall make any loan or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith; and stock so purchased or acquired shall, within six months from the time of its purchase, be sold or disposed of at public or private sale; or, in default thereof, a receiver may be appointed to close up the business of the association, according to section 192 of this title.”

§ 84. Lending limits

(a) Total loans and extensions of credit

(1) The total loans and extensions of credit by a national banking association to a person outstanding at one time and not fully secured, as determined in a manner consistent with paragraph (2) of this subsection, by collateral having a market value at least equal to the amount of the loan or extension of credit shall not exceed 15 per centum of the unimpaired capital and unimpaired surplus of the association.

(2) The total loans and extensions of credit by a national banking association to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding shall not exceed 10 per centum of the unimpaired capital and unimpaired surplus of the association. This limitation shall be separate from and in addition to the limitation contained in paragraph (1) of this subsection.

(b) Definitions

For the purposes of this section—

(1) the term “loans and extensions of credit” shall include all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person and, to the extent specified by the Comptroller of the Currency, such term shall also include any liability of a national banking association to advance funds to or on behalf of a person pursuant to a contractual commitment; and

(2) the term “person” shall include an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, corporation, sovereign government or agency, instrumentality, or political subdivision thereof, or any similar entity or organization.

(c) Exceptions

The limitations contained in subsection (a) of this section shall be subject to the following exceptions:

(1) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse shall not be subject to any limitation based on capital and surplus.

(2) The purchase of bankers’ acceptances of the kind described in section 372 of this title and issued by other banks shall not be subject to any limitation based on capital and surplus.

(3) Loans and extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of 35 per centum of capital and surplus in addition to the general limitations if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds 115 per centum of the outstanding amount of such loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples.

(4) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or Treasury bills of the United States or by other such obligations fully guaranteed as to principal and interest by the United States shall not be subject to any limitation based on capital and surplus.

(5) Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States shall not be subject to any limitation based on capital and surplus.

(6) Loans or extensions of credit secured by a segregated deposit account in the lending bank shall not be subject to any limitation based on capital and surplus.

(7) Loans or extensions of credit to any financial institution or to any receiver, conservator, superintendent of banks, or other agent in charge of the business and property of such financial institution, when such loans or extensions of credit are approved by the Comptroller of the Currency, shall not be subject to any limitation based on capital and surplus.

(8)(A) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person transferring the paper shall be subject under this section to a maximum limitation equal to 25 per centum of such capital and surplus, notwithstanding the collateral requirements set forth in subsection (a)(2) of this section.

(B) If the bank’s files or the knowledge of its officers of the financial condition of each maker of such consumer paper is reasonably adequate, and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such loans or

extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each such maker shall be the sole applicable loan limitations.

(9)(A) Loans and extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than 115 per centum of the face amount of the note covered, shall be subject under this section, notwithstanding the collateral requirements set forth in subsection (a)(2) of this section, to a maximum limitation equal to 25 per centum of such capital and surplus.

(B) Loans and extensions of credit which arise from the discount by dealers in dairy cattle of paper given in payment for dairy cattle, which paper carries a full recourse endorsement or unconditional guarantee of the seller, and which are secured by the cattle being sold, shall be subject under this section, notwithstanding the collateral requirements set forth in subsection (a)(2) of this section, to a limitation of 25 per centum of such capital and surplus.

(10) Loans or extensions of credit to the Student Loan Marketing Association shall not be subject to any limitation based on capital and surplus.

(d) Authority of Comptroller of the Currency

(1) The Comptroller of the Currency may prescribe rules and regulations to administer and carry out the purposes of this section, including rules or regulations to define or further define terms used in this section and to establish limits or requirements other than those specified in this section for particular classes or categories of loans or extensions of credit.

(2) The Comptroller of the Currency also shall have authority to determine when a loan putatively made to a person shall for purposes of this section be attributed to another person.

(R.S. §5200; June 22, 1906, ch. 3516, 34 Stat. 451; Sept. 24, 1918, ch. 176, §6, 40 Stat. 967; Oct. 22, 1919, ch. 79, §1, 41 Stat. 296; Feb. 25, 1927, ch. 191, §10, 44 Stat. 1229; May 20, 1933, ch. 35, §1, 48 Stat. 73; June 16, 1933, ch. 89, §26(a), 48 Stat. 191; Aug. 23, 1935, ch. 614, title III, §321(b), 49 Stat. 713; June 11, 1942, ch. 404, §8, 56 Stat. 356; July 15, 1949, ch. 338, title VI, §602(b), 63 Stat. 440; July 22, 1937, ch. 517, §15(a), as added Aug. 14, 1946, ch. 964, §5, 60 Stat. 1079; amended Pub. L. 85-748, §1(c), Aug. 25, 1958, 72 Stat. 841; Pub. L. 86-251, §3, Sept. 9, 1959, 73 Stat. 488; Pub. L. 87-723, §4(c)(4), Sept. 28, 1962, 76 Stat. 672; Pub. L. 90-19, §27(b), May 25, 1967, 81 Stat. 29; Pub. L. 92-318, title I, §133(c)(2), June 23, 1972, 86 Stat. 270; Pub. L. 97-320, title IV, §401(a), Oct. 15, 1982, 96 Stat. 1508; Pub. L. 97-457, §17(a), Jan. 12, 1983, 96 Stat. 2509; Pub. L. 111-203, title VI, §610(a), July 21, 2010, 124 Stat. 1611.)

AMENDMENT OF SUBSECTION (b)

Pub. L. 111-203, title VI, §610(a), (c), July 21, 2010, 124 Stat. 1611, 1612, provided that, effective 1 year after the transfer date, subsection (b) of this section is amended:

(1) in paragraph (1), by substituting “shall include—

“(A) all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person;

“(B) to the extent specified by the Comptroller of the Currency, any liability of a national banking association to advance funds to or on behalf of a person pursuant to a contractual commitment; and

“(C) any credit exposure to a person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the national banking association and the person;”

for “shall include” and all that follows through the end of the paragraph;

(2) in paragraph (2), by substituting “; and” for the period at the end; and

(3) by adding at the end the following:

“(3) the term ‘derivative transaction’ includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.”

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

Section 372 of this title, referred to in subsec. (c)(2), was in the original a reference to “section 13 of the Federal Reserve Act”. Provisions of section 13 describing bankers’ acceptances are classified to section 372 of this title. Other provisions of section 13 are classified to sections 342 to 347, 347c, 347d of this title.

CODIFICATION

R.S. §5200 derived from act June 3, 1864, ch. 106, §29, 13 Stat. 108, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1983—Subsec. (b)(1). Pub. L. 97-457 inserted a comma before “to the extent specified by the Comptroller of the Currency”.

1982—Pub. L. 97-320 amended section generally. Prior to amendment, section read as follows: “The total obligations to any national banking association of any person, copartnership, association, or corporation shall at no time exceed 10 per centum of the amount of the capital stock of such association actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund. The term ‘obligations’ shall mean the direct liability of the maker or acceptor of paper discounted with or sold to such association and the liability of the indorser, drawer, or guarantor who obtains a loan from or discounts paper with or sells paper under his guaranty to such association and shall include in the case of obligations of a copartnership or association the obligations of the several members thereof and shall include in the case of obligations of a corporation all obligations of all subsidiaries thereof in which such corporation owns or controls a majority interest. Such limitation of 10 per centum shall be subject to the following exceptions:

“(1) Obligations in the form of drafts or bills of exchange drawn in good faith against actually existing values shall not be subject under this section to any limitation based upon such capital and surplus.

“(2) Obligations arising out of the discount of commercial or business paper actually owned by the person, copartnership, association, or corporation negotiating the same shall not be subject under this section to any limitation based upon such capital and surplus.

“(3) Obligations drawn in good faith against actually existing values and secured by goods or commodities in process of shipment shall not be subject under this section to any limitation based upon such capital and surplus.

“(4) Obligations as indorser or guarantor of notes, other than commercial or business paper excepted under paragraph (2) of this section, having a maturity of not more than six months, and owned by the person, corporation, association, or copartnership indorsing and negotiating the same, shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus.

“(5) Obligations in the form of banker's acceptances of other banks of the kind described in section 372 of this title shall not be subject under this section to any limitation based upon such capital and surplus.

“(6) Obligations of any person, copartnership, association or corporation, in the form of notes or drafts secured by shipping documents, warehouse receipts or other such documents transferring or securing title covering readily marketable nonperishable staples when such property is fully covered by insurance, if it is customary to insure such staples, shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus when the market value of such staples securing such obligation is not at any time less than 115 per centum of the face amount of such obligation, and to an additional increase of limitation of 5 per centum of such capital and surplus in addition to such 25 per centum of such capital and surplus when the market value of such staples securing such additional obligation is not at any time less than 120 per centum of the face amount of such additional obligation, and to a further additional increase of limitation of 5 per centum of such capital and surplus in addition to such 30 per centum of such capital and surplus when the market value of such staples securing such additional obligation is not at any time less than 125 per centum of the face amount of such additional obligation, and to a further additional increase of limitation of 5 per centum of such capital and surplus in addition to such 35 per centum of such capital and surplus when the market value of such staples securing such additional obligation is not at any time less than 130 per centum of the face amount of such additional obligation, and to a further additional increase of limitation of 5 per centum of such capital and surplus in addition to such 40 per centum of such capital and surplus when the market value of such staples securing such additional obligation is not at any time less than 135 per centum of the face amount of such additional obligation, and to a further additional increase of limitation of 5 per centum of such capital and surplus in addition to such 45 per centum of such capital and surplus when the market value of such staples securing such additional obligation is not at any time less than 140 per centum of the face amount of such additional obligation, but this exception shall not apply to obligations of any one person, copartnership, association, or corporation arising from the same transactions and/or secured by the identical staples for more than ten months. Obligations of any person, copartnership, association, or corporation in the form of notes or drafts secured by shipping documents, warehouse receipts, or other such documents transferring or securing title covering refrigerated or frozen readily marketable staples when such property is fully covered by insurance, shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of

such capital and surplus when the market value of such staples securing such obligation is not at any time less than 115 per centum of the face amount of such additional obligation, but this exception shall not apply to obligations of any one person, copartnership, association or corporation arising from the same transactions and/or secured by the identical staples for more than six months.

“(7) Obligations of any person, copartnership, association, or corporation in the form of notes or drafts secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than 115 per centum of the face amount of the notes covered by such documents shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus. Obligations arising out of the discount by dealers in dairy cattle of paper given in payment for dairy cattle, which bear a full recourse endorsement or unconditional guarantee of the seller and are secured by the cattle being sold, shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus.

“(8) Obligations of any person, copartnership, association, or corporation secured by not less than a like amount of bonds or notes of the United States issued since April 24, 1917, or certificates of indebtedness of the United States, Treasury bills of the United States, or obligations fully guaranteed both as to principal and interest by the United States, shall (except to the extent permitted by rules and regulations prescribed by the Comptroller of the Currency, with the approval of the Secretary of the Treasury) be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus.

“(9) Obligations representing loans to any national banking association or to any banking institution organized under the laws of any State, or to any receiver, conservator, or superintendent of banks, or to any other agent, in charge of the business and property of any such association or banking institution, when such loans are approved by the Comptroller of the Currency, shall not be subject under this section to any limitation based upon such capital and surplus.

“(10) Obligations shall not be subject under this section to any limitation based upon such capital and surplus to the extent that such obligations are secured or covered by guaranties, or by commitments or agreements to take over or to purchase, made by any Federal Reserve bank or by the United States or any department, bureau, board, commission, or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States: *Provided*, That such guaranties, agreements, or commitments are unconditional and must be performed by payment of cash or its equivalent within sixty days after demand. The Comptroller of the Currency is authorized to define the terms herein used if and when he may deem it necessary.

“(11) Obligations of a local public agency (as defined in section 110(h) of the Housing Act of 1949 [42 U.S.C. 1460(h)]) or of a public housing agency (as defined in the United States Housing Act of 1937, as amended [42 U.S.C. 1437 et seq.]) which have a maturity of not more than eighteen months shall not be subject under this section to any limitation, if such obligations are secured by an agreement between the obligor agency and the Secretary of Housing and Urban Development in which the agency agrees to borrow from the Secretary, and the Secretary agrees to lend to the agency, prior to the maturity of such obligations, monies in an amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay the principal of such obligations with interest

to maturity, which monies under the terms of said agreement are required to be used for that purpose.

“(12) Obligations insured by the Secretary of Agriculture pursuant to the Bankhead-Jones Farm Tenant Act, as amended [7 U.S.C. 1000 et seq.], or the Act of August 28, 1937, as amended (relating to the conservation of water resources), or title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus.

“(13) Obligations as endorser or guarantor of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person, copartnership, association, or corporation transferring the same, shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus: *Provided, however*, That if the bank's files or the knowledge of its officers of the financial condition of each maker of such obligations is reasonably adequate, and upon certification by an officer of the bank designated for that purpose by the board of directors of the bank, that the responsibility of each maker of such obligations has been evaluated and the bank is relying primarily upon each such maker for the payment of such obligations, the limitations of this section as to the obligations of each such maker shall be the sole applicable loan limitation: *Provided further*, That such certification shall be in writing and shall be retained as part of the records of such bank.

“(14) Obligations of the Student Loan Marketing Association shall not be subject to any limitation based upon such capital and surplus.”

1972—Par. (14). Pub. L. 92-318 added par. (14).

1967—Par. (11). Pub. L. 90-19 substituted “Secretary of Housing and Urban Development” for “Housing and Home Finance Administrator or the Public Housing Administration” and “Secretary” for “Administrator or Administration” wherever appearing, respectively.

1962—Par. (12). Pub. L. 87-723 inserted “or title V of the Housing Act of 1949” before “shall be subject under this section”.

1959—Par. (6). Pub. L. 86-251, §3(a), substituted “secured by” for “secured upon” and inserted exception with respect to obligations secured by documents transferring or securing title covering refrigerated or frozen readily marketable staples.

Par. (7). Pub. L. 86-251, §3(b), inserted exception with respect to obligations arising out of the discount by dealers in dairy cattle of paper given in payment for dairy cattle.

Par. (8). Pub. L. 86-251, §3(c), struck out “in the form of notes” after “corporation”.

Par. (13). Pub. L. 86-251, §3(d), added par. (13).

1958—Par. (12). Pub. L. 85-748 amended section 15(a) of act July 22, 1937, as added by act Aug. 14, 1946, by inserting sentence amending R.S. §5200 by adding par. (12).

1949—Par. (11). Act July 15, 1949, added par. (11).

1942—Par. (10). Act June 11, 1942, added par. (10).

1935—Par. (8). Act Aug. 23, 1935, inserted “Treasury bills of the United States, or obligations fully guaranteed both as to principal and interest by the United States”.

1933—Par. (1). Act June 16, 1933, inserted provision relating to obligations of a corporation and its subsidiaries in second sentence.

Par. (9). Act May 20, 1933, added par. (9).

1927—Act Feb. 25, 1927, reenacted section, subdividing it into eight numbered exceptions.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-203, title VI, §610(c), July 21, 2010, 124 Stat. 1612, provided that: “The amendments made by this section [amending this section and section 1464 of this title] shall take effect 1 year after the transfer date.”

[For definition of “transfer date” as used in section 610(c) of Pub. L. 111-203, set out above, see section 5301 of this title.]

EFFECTIVE DATE OF 1982 AMENDMENT

Section 401(b) of Pub. L. 97-320 provided that: “This section [amending this section] shall take effect upon the expiration of one hundred and eighty days after the date of its enactment [Oct. 15, 1982].”

REPEALS

Repealing provisions of Consolidated Farmers Home Administration Act of 1961 as not having the effect of repealing the amendment to this section enacted by act July 22, 1937, §15(a), as added Aug. 14, 1946, see section 341(a) of Pub. L. 87-128, title III, Aug. 8, 1961, 75 Stat. 318, set out as a note under section 1921 of Title 7, Agriculture.

SAVINGS PROVISION

Section 26(b) of act June 16, 1933, provided: “The amendment made by this section [amending this section] shall not apply to such obligations of subsidiaries held by such association on the date this section takes effect.”

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

APPLICATION TO DISTRICT OF COLUMBIA

Provisions of this section were made applicable to banks, etc., in the District of Columbia by act Mar. 4, 1933, ch. 274, §3, 47 Stat. 1567.

§ 85. Rate of interest on loans, discounts and purchases

Any association may take, receive, reserve, and charge on any loan or discount made, or upon any notes, bills of exchange, or other evidences of debt, interest at the rate allowed by the laws of the State, Territory, or District where the bank is located, or at a rate of 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal reserve bank in the Federal reserve district where the bank is located, whichever may be the greater, and no more, except that where by the laws of any State a different rate is limited for banks organized under State laws, the rate so limited shall be allowed for associations organized or existing in any such State under title 62 of the Revised Statutes. When no rate is fixed by the laws of the State, or Territory, or District, the bank may take, receive, reserve, or charge a rate not exceeding 7 per centum, or 1 per centum in excess of the discount rate on ninety day commercial paper in effect at the Federal reserve bank in the Federal reserve district where the bank is located, whichever may be the greater, and such interest may be taken in advance, reckoning the days for which the note, bill, or other evidence of debt has to run. The maximum amount of interest or discount to be charged at a branch of an association located outside of the States of the United States and the District of Columbia shall be at the rate allowed by the laws of the country, territory, dependency, province, dominion, insular possession, or other political subdivision where the branch is located. And the purchase, discount, or sale of a bona fide bill of exchange, payable at another place than the place of such purchase, discount, or sale, at not more than the current rate of exchange for sight drafts in addition to the inter-

est, shall not be considered as taking or receiving a greater rate of interest.

(R.S. §5197; June 16, 1933, ch. 89, §25, 48 Stat. 191; Aug. 23, 1935, ch. 614, title III, §314, 49 Stat. 711; Pub. L. 93-501, title II, §201, Oct. 29, 1974, 88 Stat. 1558; Pub. L. 96-104, title I, §101, Nov. 5, 1979, 93 Stat. 789; Pub. L. 96-161, title II, §201, Dec. 28, 1979, 93 Stat. 1235; Pub. L. 96-221, title V, §529, Mar. 31, 1980, 94 Stat. 168.)

REFERENCES IN TEXT

Title 62 of the Revised Statutes, referred to in text, was in the original "this Title" meaning title LXII of the Revised Statutes, consisting of R.S. §§5133 to 5244, which are classified to this section and sections 16, 21, 22 to 24a, 25a, 25b, 26, 27, 29, 35 to 37, 39, 43, 52, 53, 55 to 57, 59 to 62, 66, 71, 72 to 76, 81, 83, 84, 86, 90, 91, 93, 93a, 94, 141 to 144, 161, 164, 181, 182, 192 to 194, 196, 215c, 481 to 485, 501, 541, 548, and 582 of this title. See, also, sections 8, 333, 334, 475, 656, 709, 1004, and 1005 of Title 18, Crimes and Criminal Procedure. For complete classification of R.S. §§5133 to 5244 to the Code, see Tables.

CODIFICATION

R.S. §5197 derived from act June 3, 1864, ch. 106, §30, 13 Stat. 108, which was the National Bank Act. See section 38 of this title.

Section 201 of Pub. L. 96-161, cited as a credit to this section, was repealed by section 529 of Pub. L. 96-221, effective at the close of Mar. 31, 1980. The amendment of this section by that repealed provision, described in the 1979 Amendments note below, shall continue in effect for limited purposes pursuant to section 529. See Savings Provisions note, describing the provisions of section 529 of Pub. L. 96-221, set out below.

Section 101 of Pub. L. 96-104, cited as a credit to this section, was repealed by section 212 of Pub. L. 96-161, effective at the close of Dec. 27, 1979. The amendment of this section by that repealed provision, described in the 1979 Amendments note below, shall continue in effect for limited purposes pursuant to section 212 of Pub. L. 96-161. See Savings Provisions note, describing the provisions of section 212 of Pub. L. 96-161, set out below. The amendment by Pub. L. 96-104, §101, was duplicated with identical language in the amendment made by Pub. L. 96-161, §201. See 1979 Amendments note below.

Section 201 of Pub. L. 93-501, cited as a credit to this section, was repealed by Pub. L. 96-104, §1, Nov. 5, 1979, 93 Stat. 789. The amendment of this section by that repealed provision, described in the 1974 Amendment note set out under this section, was duplicated in 1979 with identical language under section 101 of Pub. L. 96-104. See 1979 Amendments note below.

AMENDMENTS

1980—Pub. L. 96-221 repealed Pub. L. 96-104 and title II of Pub. L. 96-161, resulting in the striking out of "or in the case of business or agricultural loans in the amount of \$25,000 or more, at a rate of 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the bank is located," before "whichever may be the greater" in two places. See Codification and 1979 Amendment notes under this section.

1979—Pub. L. 96-161 inserted provisions relating to a 5 per centum interest rate on business or agricultural loans in the amount of \$25,000 or more that were identical to provisions inserted earlier by Pub. L. 96-104. See Codification note above.

Pub. L. 96-104 substituted "or in the case of business or agricultural loans in the amount of \$25,000 or more, at a rate of 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the bank is located, whichever may be the greater" for "whichever may be the greater" in two places. See Codification note above.

1974—Pub. L. 93-501 substituted "or in the case of business or agricultural loans in the amount of \$25,000 or more, at a rate of 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the bank is located, whichever may be the greater" for "whichever may be the greater" in two places.

1935—Act Aug. 23, 1935, inserted third sentence.

1933—Act June 16, 1933, authorized interest at the alternative rate of 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the federal reserve bank in the Federal reserve district where the bank is located if greater.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 529 of Pub. L. 96-221 provided that the amendment made by that section is effective at the close of Mar. 31, 1980.

EFFECTIVE DATE OF 1979 AMENDMENTS

Section 207 of Pub. L. 96-161, which provided that amendment by Pub. L. 96-161 was applicable to loans made in any State during the period beginning on Dec. 28, 1979, and ending on the earliest of (1) in the case of a State statute, July 1, 1980; (2) the date, after Dec. 28, 1979, on which such State adopts a law stating in substance that such State does not want the amendment of this section made by Pub. L. 96-161 to apply with respect to loans made in such State; or (3) the date on which such State certifies that the voters of such State, after Dec. 28, 1979, have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment to the constitution of such State which prohibits the charging of interest at the rates provided in the amendment of this section by Pub. L. 96-161, was repealed by Pub. L. 96-221, title V, §529, Mar. 31, 1980, 94 Stat. 168.

Section 107 of Pub. L. 96-104, which provided that amendment by Pub. L. 96-104 was applicable to loans made by any State during the period beginning on Nov. 5, 1979, and ending on the earlier of July 1, 1981, or the date after Nov. 5, 1979, on which such State adopts a law stating in substance that such State does not want the amendment of this section to apply with respect to loans made in such State, or the date on which such State certifies that the voters of such State have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment of the constitution of such State, which prohibits the charging of interest at the rates provided in the amendment of this section, was repealed by Pub. L. 96-161, title II, §212, Dec. 28, 1979, 93 Stat. 1239.

EFFECTIVE AND TERMINATION DATES OF 1974 AMENDMENT

Section 206 of Pub. L. 93-501, which provided that amendment by Pub. L. 93-501 applicable to loans made in any state after Oct. 29, 1974, but prior to the earlier of July 1, 1977, or the date (after Oct. 29, 1974) of enactment by the state of a law prohibiting the charging of interest at the rates provided in the amendment of this section, was repealed by Pub. L. 96-104, §1, Nov. 5, 1979, 93 Stat. 789.

SAVINGS PROVISIONS

Section 529 of Pub. L. 96-221 provided in part that, notwithstanding the repeal of Pub. L. 96-104 and title II of Pub. L. 96-161, the provisions added to this section by those repealed laws shall continue to apply to any loan made, any deposit made, or any obligation issued in any State during any period when those provisions were in effect in such State.

Section 212 of Pub. L. 96-161 provided in part that, notwithstanding the repeal, effective at the close of Dec. 27, 1979, of Pub. L. 96-104 [which had enacted sections 86a, 371b-1, 1730e, and 1831a of this title, amended sections 85, 1425b, and 1828 of this title and section 687 of Title 15, Commerce and Trade, repealed sections

371b-1, 1730e, and 1831a of this title and notes set out under sections 371b-1 and 1831a of this title, and enacted provisions set out as notes under this section and sections 86a, 371b-1, and 1831a of this title], the amendment which had been made by title I of Pub. L. 96-104 and the provisions of that title would continue to apply to any loan made in any State on or after Nov. 5, 1979, but prior to the repeal of Pub. L. 96-104, and that the amendments made by title II of Pub. L. 96-104 would continue to apply to any deposit made or obligation issued in any State on or after Nov. 5, 1979, but prior to the repeal of Pub. L. 96-104.

Section 1 of Pub. L. 96-104 provided in part that, notwithstanding the repeal of titles II and III of Pub. L. 93-501 [which had enacted sections 371b-1, 1730e, and 1831a of this title, amended sections 85, 1425b, and 1828 of this title, and section 687 of Title 15, Commerce and Trade, and enacted provisions set out as notes under sections 371b-1 and 1831a of this title], the amendments which had been made by title II of that Act and the provisions of such title would continue to apply to any loan made in any State during the period specified in section 206 of such Act [set out as a note under section 1831a of this title] and that the amendments which had been made by title III of such Act would continue to apply to any deposit made or obligation issued in any State during the period specified in section 304 of such Act [set out as a note under section 371b-1 of this title].

CHOICE OF HIGHEST APPLICABLE INTEREST RATE

In any case in which one or more provisions of, or amendments made by, title V of Pub. L. 96-221 [enacting sections 86a, 1730g, 1735f-7a, 1785(g), and 1831d of this title and section 687(i) of Title 15, Commerce and Trade, and enacting provisions set out as notes under sections 86a, 1730g, and 1735f-7 of this title], section 1735f-7 of this title, or any other provisions of law, including this section, apply with respect to the same loan, mortgage, credit sale, or advance, such loan, mortgage, credit sale, or advance may be made at the highest applicable rate, see section 528 of Pub. L. 96-221, set out as a note under section 1735f-7a of this title.

STATES HAVING CONSTITUTIONAL PROVISIONS REGARDING MAXIMUM INTEREST RATES

Section 213 of Pub. L. 96-161 provided that the provisions of title II of Pub. L. 96-161, which amended this section, repealed provisions which had formerly amended this section, and enacted provisions set out as notes under this section, to continue to apply until July 1, 1981, in the case of any State having a constitutional provision regarding maximum interest rates.

§ 86. Usurious interest; penalty for taking; limitations

The taking, receiving, reserving, or charging a rate of interest greater than is allowed by section 85 of this title, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. In case the greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back, in an action in the nature of an action of debt, twice the amount of the interest thus paid from the association taking or receiving the same: *Provided*, That such action is commenced within two years from the time the usurious transaction occurred.

(R.S. § 5198.)

CODIFICATION

R.S. § 5198 (less last sentence) derived from act June 3, 1864, ch. 106, § 30, 13 Stat. 108, which was the National Bank Act. See section 38 of this title.

Section is based on R.S. § 5198, less last sentence as added by act Feb. 18, 1875, ch. 80, § 1, 18 Stat. 320, which is classified to section 94 of this title.

§ 86a. Omitted

CODIFICATION

Section, Pub. L. 96-221, title V, § 511, Mar. 31, 1980, 94 Stat. 164; Pub. L. 96-399, title III, § 324(b), (d), Oct. 8, 1980, 94 Stat. 1648, which authorized interest on business or agricultural loans of \$1,000 or more at a rate of not more than 5 per centum in excess of the discount rate, was omitted pursuant to section 512 of Pub. L. 96-221 which made these provisions applicable only with respect to such loans made in any State during the period beginning on April 1, 1980, and ending on the earlier of (1) April 1, 1983, or (2) the date, on or after April 1, 1980, on which such State adopts a law or certifies that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly that such State does not want these provisions to apply with respect to loans made in such State.

A prior section 86a, Pub. L. 96-161, title II, § 205, Dec. 28, 1979, 93 Stat. 1237, similar to this section as enacted by Pub. L. 96-221, was repealed by section 529 of Pub. L. 96-221, effective at the close of Mar. 31, 1980, except that its provisions would continue to apply to any loan made, any deposit made, or any obligation issued in any State during any period when that section was in effect in such State. For the effective date provisions relating to the prior section 86a, see section 207 of Pub. L. 96-161.

Another prior section 86a, Pub. L. 96-104, title I, § 105, Nov. 5, 1979, 93 Stat. 791, identical to this section as enacted by Pub. L. 96-161, was repealed by section 212 of Pub. L. 96-161, effective at the close of Dec. 27, 1979, except that its provisions would continue to apply to loans made in any State on or after Nov. 5, 1979, but prior to such repeal.

Section 301 of Pub. L. 96-104, which limited the applicability of Pub. L. 96-104 to those States having a constitutional provision that all contracts for a greater rate of interest than 10 per centum per annum are void as to both principal and interest, was repealed by section 212 of Pub. L. 96-161, effective at the close of Dec. 27, 1979.

§§ 87 to 89. Repealed. Pub. L. 103-325, title VI, § 602(e)(2)-(4), Sept. 23, 1994, 108 Stat. 2291

Section 87, R.S. § 5203, related to restriction on use by bank of its circulating notes.

Section 88, R.S. § 5206, related to restriction on use by bank of notes of other banks.

Section 89, R.S. § 5196, related to duty of bank to receive circulating notes of other banks in payment of debts.

§ 90. Depositaries of public moneys and financial agents of Government

All national banking associations, designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, under such regulations as may be prescribed by the Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government, as may be required of them. The Secretary of the Treasury shall require the associations thus designated to give satisfactory security, by the deposit of United States bonds and otherwise, for the safe-keeping and prompt payment of the public money deposited with them, and for the faithful performance of their duties as financial agents of the Government: *Provided*, That the Secretary shall, on or before

the 1st of January of each year, make a public statement of the securities required during that year for such deposits. And every association so designated as receiver or depositary of the public money shall take and receive at par all of the national currency bills, by whatever association issued, which have been paid into the Government for internal revenue, or for loans or stocks: *Provided*, That the Secretary of the Treasury shall distribute the deposits herein provided for, as far as practicable, equitably between the different States and sections.

Any national banking association may, upon the deposit with it of any funds by any State or political subdivision thereof or any agency or other governmental instrumentality of one or more States or political subdivisions thereof, including any officer, employee, or agent thereof in his official capacity, give security for the safekeeping and prompt payment of the funds so deposited to the same extent and of the same kind as is authorized by the law of the State in which such association is located in the case of other banking institutions in the State.

Any national banking association may, upon the deposit with it of any funds by any federally recognized Indian tribe, or any officer, employee, or agent thereof in his or her official capacity, give security for the safekeeping and prompt payment of the funds so deposited by the deposit of United States bonds and otherwise as may be prescribed by the Secretary of the Treasury for public funds under the first paragraph of this section.

Notwithstanding chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, the Secretary may select associations as financial agents in accordance with any process the Secretary deems appropriate and their reasonable duties may include the provision of electronic benefit transfer services (including State-administered benefits with the consent of the States), as defined by the Secretary.

(R.S. §5153; Mar. 3, 1901, ch. 871, 31 Stat. 1448; Mar. 4, 1907, ch. 2913, §3, 34 Stat. 1290; Dec. 23, 1913, ch. 6, §27, 38 Stat. 274; Aug. 4, 1914, ch. 225, 38 Stat. 682; June 25, 1930, ch. 604, 46 Stat. 809; Aug. 18, 1950, ch. 754, 64 Stat. 463; Pub. L. 96-153, title III, §323(f), Dec. 21, 1979, 93 Stat. 1120; Pub. L. 104-208, div. A, title I, §101(f) [§2(1)], Sept. 30, 1996, 110 Stat. 3009-314, 3009-386.)

CODIFICATION

In text, “chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41” substituted for “the Federal Property and Administrative Services Act of 1949, as amended” on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, which Act enacted Title 40, Public Buildings, Property, and Works, and Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

R.S. §5153 derived from act June 3, 1864, ch. 106, §45, 13 Stat. 113, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1996—Pub. L. 104-208 added fourth par.

1979—Pub. L. 96-153 added third par.

1950—Act Aug. 18, 1950, permitted national banks to accept and give security for deposits of funds made by

agencies or governmental instrumentalities or States or political subdivisions thereof and by their officers, employees or agents.

1930—Act June 25, 1930, added second par.

§91. Transfers by bank and other acts in contemplation of insolvency

All transfers of the notes, bonds, bills of exchange, or other evidences of debt owing to any national banking association, or of deposits to its credit; all assignments of mortgages, sureties on real estate, or of judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use, or for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by chapter 4 of title 62 of the Revised Statutes, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be utterly null and void; and no attachment, injunction, or execution, shall be issued against such association or its property before final judgment in any suit, action, or proceeding, in any State, county, or municipal court.

(R.S. §5242.)

REFERENCES IN TEXT

Chapter 4 of title 62 of the Revised Statutes, referred to in text, was in the original “this chapter”, meaning chapter 4 of title 62 of the Revised Statutes, consisting of R.S. §§5220 to 5244, which are classified to this section and sections 16, 43, 93, 93a, 181, 182, 192 to 194, 196, and 481 to 485 of this title. See, also, section 709 of Title 18, Crimes and Criminal Procedure. For complete classification of R.S. §§5220 to 5244 to the Code, see Tables.

CODIFICATION

R.S. §5242 derived from act June 3, 1864, ch. 106, §52, 13 Stat. 115, which was the National Bank Act, and act Mar. 3, 1873, ch. 269, §2, 17 Stat. 603. See section 38 of this title.

§92. Acting as insurance agent or broker

In addition to the powers now vested by law in national banking associations organized under the laws of the United States any such association located and doing business in any place the population of which does not exceed five thousand inhabitants, as shown by the last preceding decennial census, may, under such rules and regulations as may be prescribed by the Comptroller of the Currency, act as the agent for any fire, life, or other insurance company authorized by the authorities of the State in which said bank is located to do business in said State, by soliciting and selling insurance and collecting premiums on policies issued by such company; and may receive for services so rendered such fees or commissions as may be agreed upon between the said association and the insurance company for which it may act as agent: *Provided, however*, That no such bank shall in any case assume or guarantee the payment of any premium on insurance policies issued through its agency by its principal: *And provided further*, That the bank shall not guarantee the truth of any statement made by an assured in filing his application for insurance.

(Dec. 23, 1913, ch. 6, § 13 (par.), as added Sept. 7, 1916, ch. 461, 39 Stat. 753; amended Pub. L. 97-320, title IV, § 403(b), Oct. 15, 1982, 96 Stat. 1511.)

CODIFICATION

Section is based on the eleventh par. of section 13 of act Dec. 23, 1913, as amended. The eleventh par. constituted the ninth par. of section 13 in 1916 (39 Stat. 752, 753), became the tenth par. in 1923 (42 Stat. 1478), and became the eleventh par. in 1932 (47 Stat. 715). For further details, see Codification notes under sections 342 to 344 of this title.

For decision by U.S. Supreme Court that, despite faulty placement of quotation marks, act Sept. 7, 1916, placed within section 13 of act Dec. 23, 1913, each of the ten pars. located between the phrases that introduced the amendments to sections 13 and 14 of said act, that only the seventh par. (rather than seventh to tenth pars.) comprised the amended R.S. § 5202, and that section 20 of act Apr. 5, 1918 (40 Stat. 512) (which amended R.S. § 5202 comprised of a single par.), did not amend section 13 of said act so as to repeal the eighth to tenth pars., see *United States National Bank of Oregon v. Independent Insurance Agents of America, Inc., et al.*, 508 U.S. 439, 113 S.Ct. 2173, 124 L.Ed. 2d 402 (1993). As the result of subsequent amendments, such seventh to tenth pars. of section 13 now constitute the ninth to twelfth pars. The ninth par. amended former section 82 of this title, and the tenth to twelfth pars. are classified to sections 361, 92, and 373, respectively, of this title.

AMENDMENTS

1982—Pub. L. 97-320 struck out “; and may also act as the broker or agent for others in making or procuring loans on real estate located within one hundred miles of the place in which said bank may be located, receiving for such services a reasonable fee or commission” after “may act as agent” and “guarantee either the principal or interest of any such loans or” after “shall in any case”.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-320 effective upon the expiration of 180 days after Oct. 15, 1982, see section 403(c) of Pub. L. 97-320, set out as a note under section 371 of this title.

MORATORIUM

Pub. L. 100-86, title II, § 201(a), (b)(5), Aug. 10, 1987, 101 Stat. 581, 583, provided that, during period beginning Mar. 6, 1987, and ending Mar. 1, 1988, national banks and Federal branches or agencies of foreign banks could not expand their insurance agency activities pursuant to this section into places where they were not conducting such activities as of Mar. 5, 1987.

§ 92a. Trust powers

(a) Authority of Comptroller of the Currency

The Comptroller of the Currency shall be authorized and empowered to grant by special permit to national banks applying therefor, when not in contravention of State or local law, the right to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located.

(b) Grant and exercise of powers deemed not in contravention of State or local law

Whenever the laws of such State authorize or permit the exercise of any or all of the foregoing

powers by State banks, trust companies, or other corporations which compete with national banks, the granting to and the exercise of such powers by national banks shall not be deemed to be in contravention of State or local law within the meaning of this section.

(c) Segregation of fiduciary and general assets; separate books and records; access of State banking authorities to reports of examinations, books, records, and assets

National banks exercising any or all of the powers enumerating¹ in this section shall segregate all assets held in any fiduciary capacity from the general assets of the bank and shall keep a separate set of books and records showing in proper detail all transactions engaged in under authority of this section. The State banking authorities may have access to reports of examination made by the Comptroller of the Currency insofar as such reports relate to the trust department of such bank, but nothing in this section shall be construed as authorizing the State banking authorities to examine the books, records, and assets of such bank.

(d) Prohibited operations; separate investment account; collateral for certain funds used in conduct of business

No national bank shall receive in its trust department deposits of current funds subject to check or the deposit of checks, drafts, bills of exchange, or other items for collection or exchange purposes. Funds deposited or held in trust by the bank awaiting investment shall be carried in a separate account and shall not be used by the bank in the conduct of its business unless it shall first set aside in the trust department United States bonds or other securities approved by the Comptroller of the Currency.

(e) Lien and claim upon bank failure

In the event of the failure of such bank the owners of the funds held in trust for investment shall have a lien on the bonds or other securities so set apart in addition to their claim against the estate of the bank.

(f) Deposits of securities for protection of private or court trusts; execution of and exemption from bond

Whenever the laws of a State require corporations acting in a fiduciary capacity to deposit securities with the State authorities for the protection of private or court trusts, national banks so acting shall be required to make similar deposits and securities so deposited shall be held for the protection of private or court trusts, as provided by the State law. National banks in such cases shall not be required to execute the bond usually required of individuals if State corporations under similar circumstances are exempt from this requirement. National banks shall have power to execute such bond when so required by the laws of the State.

(g) Officials' oath or affidavit

In any case in which the laws of a State require that a corporation acting as trustee, executor, administrator, or in any capacity specified in this section, shall take an oath or make

¹ So in original. Probably should be “enumerated”.

an affidavit, the president, vice president, cashier, or trust officer of such national bank may take the necessary oath or execute the necessary affidavit.

(h) Loans of trust funds to officers and employees prohibited; penalties

It shall be unlawful for any national banking association to lend any officer, director, or employee any funds held in trust under the powers conferred by this section. Any officer, director, or employee making such loan, or to whom such loan is made, may be fined not more than \$5,000, or imprisoned not more than five years, or may be both fined and imprisoned, in the discretion of the court.

(i) Considerations determinative of grant or denial of applications; minimum capital and surplus for issuance of permit

In passing upon applications for permission to exercise the powers enumerated in this section, the Comptroller of the Currency may take into consideration the amount of capital and surplus of the applying bank, whether or not such capital and surplus is sufficient under the circumstances of the case, the needs of the community to be served, and any other facts and circumstances that seem to him proper, and may grant or refuse the application accordingly: *Provided*, That no permit shall be issued to any national banking association having a capital and surplus less than the capital and surplus required by State law of State banks, trust companies, and corporations exercising such powers.

(j) Surrender of authorization; board resolution; Comptroller certification; activities affected; regulations

Any national banking association desiring to surrender its right to exercise the powers granted under this section, in order to relieve itself of the necessity of complying with the requirements of this section, or to have returned to it any securities which it may have deposited with the State authorities for the protection of private or court trusts, or for any other purpose, may file with the Comptroller of the Currency a certified copy of a resolution of its board of directors signifying such desire. Upon receipt of such resolution, the Comptroller of the Currency, after satisfying himself that such bank has been relieved in accordance with State law of all duties as trustee, executory,² administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics or other fiduciary, under court, private, or other appointments previously accepted under authority of this section, may, in his discretion, issue to such bank a certificate certifying that such bank is no longer authorized to exercise the powers granted by this section. Upon the issuance of such a certificate by the Comptroller of the Currency, such bank (1) shall no longer be subject to the provisions of this section or the regulations of the Comptroller of the Currency made pursuant thereto, (2) shall be entitled to have returned to it any securities which it may have deposited with the State authorities for the protection of private or

court trusts, and (3) shall not exercise thereafter any of the powers granted by this section without first applying for and obtaining a new permit to exercise such powers pursuant to the provisions of this section. The Comptroller of the Currency is authorized and empowered to promulgate such regulations as he may deem necessary to enforce compliance with the provisions of this section and the proper exercise of the powers granted therein.

(k) Revocation; procedures applicable

(1) In addition to the authority conferred by other law, if, in the opinion of the Comptroller of the Currency, a national banking association is unlawfully or unsoundly exercising, or has unlawfully or unsoundly exercised, or has failed for a period of five consecutive years to exercise, the powers granted by this section or otherwise fails or has failed to comply with the requirements of this section, the Comptroller may issue and serve upon the association a notice of intent to revoke the authority of the association to exercise the powers granted by this section. The notice shall contain a statement of the facts constituting the alleged unlawful or unsound exercise of powers, or failure to exercise powers, or failure to comply, and shall fix a time and place at which a hearing will be held to determine whether an order revoking authority to exercise such powers should issue against the association.

(2) Such hearing shall be conducted in accordance with the provisions of section 1818(h) of this title, and subject to judicial review as provided in such section, and shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or later date is set by the Comptroller at the request of any association so served.

(3) Unless the association so served shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the revocation order. In the event of such consent, or if upon the record made at any such hearing, the Comptroller shall find that any allegation specified in the notice of charges has been established, the Comptroller may issue and serve upon the association an order prohibiting it from accepting any new or additional trust accounts and revoking authority to exercise any and all powers granted by this section, except that such order shall permit the association to continue to service all previously accepted trust accounts pending their expeditious divestiture or termination.

(4) A revocation order shall become effective not earlier than the expiration of thirty days after service of such order upon the association so served (except in the case of a revocation order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Comptroller or a reviewing court.

(Pub. L. 87-722, §1, Sept. 28, 1962, 76 Stat. 668; Pub. L. 96-221, title VII, §704, Mar. 31, 1980, 94 Stat. 187.)

AMENDMENTS

1980—Subsec. (k). Pub. L. 96-221 added subsec. (k).

² So in original. Probably should be "executor,".

SAVINGS PROVISION

Section 2 of Pub. L. 87-722 provided that: "Nothing contained in this Act [enacting this section, amending sections 581 and 584(a)(2) of Title 26, and repealing section 248(k) of this title] shall be deemed to affect or curtail the right of any national bank to act in fiduciary capacities under a permit granted before the date of enactment of this Act [Sept. 28, 1962] by the Board of Governors of the Federal Reserve System, nor to affect the validity of any transactions entered into at any time by any national bank pursuant to such permit. On and after the date of enactment of this Act the exercise of fiduciary powers by national banks shall be subject to the provisions of this Act and the requirements of regulations issued by the Comptroller of the Currency pursuant to the authority granted by this Act."

§ 93. Violation of provisions of chapter**(a) Forfeiture of franchise; personal liability of directors**

If the directors of any national banking association shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the association to violate any of the provisions of title 62 of the Revised Statutes, all the rights, privileges, and franchises of the association shall be thereby forfeited. Such violation shall, however, be determined and adjudged by a proper district or Territorial court of the United States in a suit brought for that purpose by the Comptroller of the Currency, in his own name, before the association shall be declared dissolved. And in cases of such violation, every director who participated in or assented to the same shall be held liable in his personal and individual capacity for all damages which the association, its shareholders, or any other person, shall have sustained in consequence of such violation.

(b) Civil money penalty**(1) First tier**

Any national banking association which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such association who, violates any provision of title 62 of the Revised Statutes or any of the provisions of section 92a of this title, or any regulation issued pursuant thereto, shall forfeit and pay a civil penalty of not more than \$5,000 for each day during which such violation continues.

(2) Second tier

Notwithstanding paragraph (1), any national banking association which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such association who, commits any violation described in paragraph (1) which—¹

(A)(i) commits any violation described in any² paragraph (1);

(ii) recklessly engages in an unsafe or unsound practice in conducting the affairs of such association; or

(iii) breaches any fiduciary duty;

(B) which violation, practice, or breach—

(i) is part of a pattern of misconduct;

(ii) causes or is likely to cause more than a minimal loss to such association; or

(iii) results in pecuniary gain or other benefit to such party,

shall forfeit and pay a civil penalty of not more than \$25,000 for each day during which such violation, practice, or breach continues.

(3) Third tier

Notwithstanding paragraphs (1) and (2), any national banking association which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such association who—

(A) knowingly—

(i) commits any violation described in paragraph (1);

(ii) engages in any unsafe or unsound practice in conducting the affairs of such association; or

(iii) breaches any fiduciary duty; and

(B) knowingly or recklessly causes a substantial loss to such association or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under paragraph (4) for each day during which such violation, practice, or breach continues.

(4) Maximum amounts of penalties for any violation described in paragraph (3)

The maximum daily amount of any civil penalty which may be assessed pursuant to paragraph (3) for any violation, practice, or breach described in such paragraph is—

(A) in the case of any person other than a national banking association, an amount to not³ exceed \$1,000,000; and

(B) in the case of a national banking association, an amount not to exceed the lesser of—

(i) \$1,000,000; or

(ii) 1 percent of the total assets of such association.

(5) Assessment; etc.

Any penalty imposed under paragraph (1), (2), or (3) shall be assessed and collected by the Comptroller of the Currency in the manner provided in subparagraphs (E), (F), (G), and (I) of section 1818(i)(2) of this title for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

(6) Hearing

The association or other person against whom any penalty is assessed under this subsection shall be afforded an agency hearing if such association or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 1818(h) of this title shall apply to any proceeding under this subsection.

(7) Disbursement

All penalties collected under authority of this subsection shall be deposited into the Treasury.

¹ So in original. The words " , commits any violation described in paragraph (1) which" probably should not appear.

² So in original. The word "any" probably should not appear.

³ So in original. Probably should be "not to".

(8) "Violate" defined

For purposes of this section, the term "violate" includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(12)⁴ Regulations

The Comptroller shall prescribe regulations establishing such procedures as may be necessary to carry out this subsection.

(c) Notice under this section after separation from service

The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such an association (including a separation caused by the closing of such an association) shall not affect the jurisdiction and authority of the Comptroller of the Currency to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such association (whether such date occurs before, on, or after August 9, 1989).

(d) Forfeiture of franchise for money laundering or cash transaction reporting offenses**(1) In general****(A) Conviction of title 18 offenses****(i) Duty to notify**

If a national bank, a Federal branch, or Federal agency has been convicted of any criminal offense under section 1956 or 1957 of title 18, the Attorney General shall provide to the Comptroller of the Currency a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

(ii) Notice of termination; pretermination hearing

After receiving written notification from the Attorney General of such a conviction, the Comptroller of the Currency shall issue to the national bank, Federal branch, or Federal agency a notice of the Comptroller's intention to terminate all rights, privileges, and franchises of the bank, Federal branch, or Federal agency and schedule a pretermination hearing.

(B) Conviction of title 31 offenses

If a national bank, a Federal branch, or a Federal agency is convicted of any criminal offense under section 5322 or 5324 of title 31, after receiving written notification from the Attorney General, the Comptroller of the Currency may issue to the national bank, Federal branch, or Federal agency a notice of the Comptroller's intention to terminate all rights, privileges, and franchises of the bank, Federal branch, or Federal agency and schedule a pretermination hearing.

(C) Judicial review

Section 1818(h) of this title shall apply to any proceeding under this subsection.

(2) Factors to be considered

In determining whether a franchise shall be forfeited under paragraph (1), the Comptroller of the Currency shall take into account the following factors:

(A) The extent to which directors or senior executive officers of the national bank, Federal branch, or Federal agency knew of, or were involved in, the commission of the money laundering offense of which the bank, Federal branch, or Federal agency was found guilty.

(B) The extent to which the offense occurred despite the existence of policies and procedures within the national bank, Federal branch, or Federal agency which were designed to prevent the occurrence of any such offense.

(C) The extent to which the national bank, Federal branch, or Federal agency has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the bank, Federal branch, or Federal agency was found guilty.

(D) The extent to which the national bank, Federal branch, or Federal agency has implemented additional internal controls (since the commission of the offense of which the bank, Federal branch, or Federal agency was found guilty) to prevent the occurrence of any other money laundering offense.

(E) The extent to which the interest of the local community in having adequate deposit and credit services available would be threatened by the forfeiture of the franchise.

(3) Successor liability

This subsection shall not apply to a successor to the interests of, or a person who acquires, a bank, a Federal branch, or a Federal agency that violated a provision of law described in paragraph (1), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this subsection or regulations prescribed under this subsection.

(4) "Senior executive officer" defined

The term "senior executive officer" has the same meaning as in regulations prescribed under section 1831i(f) of this title.

(d)⁵ Authority

The Comptroller of the Currency may act in the Comptroller's own name and through the Comptroller's own attorneys in enforcing any provision of title 62 of the Revised Statutes, regulations thereunder, or any other law or regulation, or in any action, suit, or proceeding to which the Comptroller of the Currency is a party.

(R.S. §5239; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; Pub. L. 95-630, title I, §103, Nov. 10, 1978, 92 Stat. 3643; Pub. L. 97-320, title IV, §424(d)(3), (f), (g), Oct. 15, 1982, 96 Stat. 1523; Pub. L. 97-457, §24, Jan. 12, 1983, 96 Stat. 2510; Pub. L. 101-73, title IX, §§905(e), 907(e), Aug. 9, 1989, 103 Stat. 460, 469;

⁴ So in original. No pars. (9) to (11) have been enacted.

⁵ So in original. Probably should be "(e)".

Pub. L. 102-550, title XV, § 1502(a), Oct. 28, 1992, 106 Stat. 4045; Pub. L. 103-322, title XXXIII, § 330017(b)(2), Sept. 13, 1994, 108 Stat. 2149; Pub. L. 103-325, title III, § 331(b)(3), title IV, §§ 411(c)(2)(C), 413(b)(2), Sept. 23, 1994, 108 Stat. 2232, 2253, 2254.)

REFERENCES IN TEXT

Title 62 of the Revised Statutes, referred to in subsecs. (a), (b)(1), and (d), was in the original “this Title” meaning title LXII of the Revised Statutes, consisting of R.S. §§ 5133 to 5244, which are classified to this section and sections 16, 21, 22 to 24a, 25a, 25b, 26, 27, 29, 35 to 37, 39, 43, 52, 53, 55 to 57, 59 to 62, 66, 71, 72 to 76, 81, 83 to 86, 90, 91, 93a, 94, 141 to 144, 161, 164, 181, 182, 192 to 194, 196, 215c, 481 to 485, 501, 541, 548, and 582 of this title. See, also, sections 8, 333, 334, 475, 656, 709, 1004, and 1005 of Title 18, Crimes and Criminal Procedure. For complete classification of R.S. §§ 5133 to 5244 to the Code, see Tables.

CODIFICATION

R.S. § 5239 derived from act June 3, 1864, ch. 106, § 53, 13 Stat. 116, which was the National Bank Act. See section 38 of this title.

Act Mar. 3, 1911, conferred the powers and duties of the former circuit courts upon the district courts.

AMENDMENTS

1994—Subsec. (c). Pub. L. 103-322, § 330017(b)(2), and Pub. L. 103-325, § 413(b)(2), amended section identically, redesignating subsec. (c), relating to forfeiture of franchise for money laundering, as (d).

Subsec. (d). Pub. L. 103-322, § 330017(b)(2), and Pub. L. 103-325, § 413(b)(2), amended section identically, redesignating subsec. (c), relating to forfeiture of franchise for money laundering, as (d).

Pub. L. 103-325, § 331(b)(3), added subsec. (d) relating to authority.

Subsec. (d)(1)(B). Pub. L. 103-325, § 411(c)(2)(C), substituted “section 5322 or 5324 of title 31” for “section 5322 of title 31”.

1992—Subsec. (c). Pub. L. 102-550 added subsec. (c) relating to forfeiture of franchise for money laundering.

1989—Subsec. (b). Pub. L. 101-73, § 907(e), amended subsec. (b) generally, revising and restating as pars. (1) to (8) and (12) provisions of former pars. (1) to (8).

Subsec. (c). Pub. L. 101-73, § 905(e), added subsec. (c) relating to notice after separation from service.

1982—Subsec. (b)(1). Pub. L. 97-320, as amended by Pub. L. 97-457, inserted “or any of the provisions of section 92a of this title”, and substituted “may be assessed” for “shall be assessed” and “title” for “chapter”.

1978—Pub. L. 95-630 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1989 AMENDMENT

Section 907(l) of Pub. L. 101-73 provided that: “The amendments made by this section [amending this section and sections 481, 504, 505, 1467a, 1786, 1817, 1818, 1828, 1847, and 1972 of this title] shall apply with respect to conduct engaged in by any person after the date of the enactment of this Act [Aug. 9, 1989], except that the increased maximum civil penalties of \$5,000 and \$25,000 per violation or per day may apply to such conduct engaged in before such date if such conduct—

“(1) is not already subject to a notice (initiating an administrative proceeding) issued by the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act [12 U.S.C. 1813(q)]) or the National Credit Union Administration Board; and

“(2) occurred after the completion of the last report of examination of the institution involved by the appropriate Federal banking agency (as so defined) occurring before the date of the enactment of this Act.”

EFFECTIVE DATE OF 1978 AMENDMENT

Section 109 of title I of Pub. L. 95-630 provided that: “Any amendment made by this title which provides for

the imposition of civil penalties [enacting sections 504 and 505 of this title and amending this section and sections 1464, 1730, 1730a, 1786, 1818, 1828, and 1847 of this title] shall apply only to violations occurring or continuing after the date of its enactment [Nov. 10, 1978].”

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 93a. Authority to prescribe rules and regulations

Except to the extent that authority to issue such rules and regulations has been expressly and exclusively granted to another regulatory agency, the Comptroller of the Currency is authorized to prescribe rules and regulations to carry out the responsibilities of the office, except that the authority conferred by this section does not apply to section 36 of this title or to securities activities of National Banks under the Act commonly known as the “Glass-Steagall Act”.

(R.S. § 5239A, as added Pub. L. 96-221, title VII, § 708, Mar. 31, 1980, 94 Stat. 188.)

REFERENCES IN TEXT

The Glass-Steagall Act, referred to in text, probably refers to act June 16, 1933, ch. 89, 48 Stat. 162, as amended, also known as the Banking Act of 1933 or the Glass-Steagall Act, 1933, rather than to act Feb. 27, 1932, ch. 58, 47 Stat. 56, known as the Glass-Steagall Act, 1932. Section 16 of the 1933 act, which amended section 24 (Seventh) of this title, related in part to securities activities of national banks. For complete classification of these Acts to the Code, see Tables.

§ 94. Venue of suits

Any action or proceeding against a national banking association for which the Federal Deposit Insurance Corporation has been appointed receiver, or against the Federal Deposit Insurance Corporation as receiver of such association, shall be brought in the district or territorial court of the United States held within the district in which that association's principal place of business is located, or, in the event any State, county, or municipal court has jurisdiction over such an action or proceeding, in such court in the county or city in which that association's principal place of business is located.

(R.S. § 5198; Feb. 18, 1875, ch. 80, § 1, 18 Stat. 320; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Pub. L. 97-320, title IV, § 406, Oct. 15, 1982, 96 Stat. 1512; Pub. L. 97-457, § 20(a), Jan. 12, 1983, 96 Stat. 2509.)

CODIFICATION

The last sentence of R.S. § 5198, as added by act Feb. 18, 1875, ch. 80, § 1, 18 Stat. 320, appears to have been derived from act June 3, 1864, ch. 106, § 57, 13 Stat. 116, which was the National Bank Act. See section 38 of this title.

Section is comprised of last sentence of R.S. § 5198 as added by act Feb. 18, 1875, ch. 80, § 1, 18 Stat. 320. The remaining sentences of R.S. § 5198 are classified to section 86 of this title.

Act Mar. 3, 1911, conferred powers and duties of former circuit courts on district courts.

AMENDMENTS

1982—Pub. L. 97-320, as amended by Pub. L. 97-457, amended section generally. Prior to amendment sec-

tion read as follows: "Actions and proceedings against any association under this chapter may be had in any district or Territorial court of the United States held within the district in which such association may be established, or in any State, county, or municipal court in the county or city in which said association is located having jurisdiction in similar cases."

EFFECTIVE DATE OF 1983 AMENDMENT

Section 20(b) of Pub. L. 97-457 provided that: "The amendment made by subsection (a) [amending this section] shall be deemed to have taken effect upon the enactment of Public Law 97-320 [Oct. 15, 1982]."

§ 94a. Repealed. June 25, 1948, ch. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948

Section, act July 12, 1882, ch. 290, § 4, 22 Stat. 163, related to jurisdiction and venue. See sections 1348 and 1394 of Title 28, Judiciary and Judicial Procedure.

§ 95. Emergency limitations and restrictions on business of members of Federal Reserve System; designation of legal holiday for national banking associations; exceptions; "State" defined

(a) In order to provide for the safer and more effective operation of the National Banking System and the Federal Reserve System, to preserve for the people the full benefits of the currency provided for by the Congress through the National Banking System and the Federal Reserve System, and to relieve interstate commerce of the burdens and obstructions resulting from the receipt on an unsound or unsafe basis of deposits subject to withdrawal by check, during such emergency period as the President of the United States by proclamation may prescribe, no member bank of the Federal Reserve System shall transact any banking business except to such extent and subject to such regulations, limitations and restrictions as may be prescribed by the Secretary of the Treasury, with the approval of the President. Any individual, partnership, corporation, or association, or any director, officer or employee thereof, violating any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000 or, if a natural person, may, in addition to such fine, be imprisoned for a term not exceeding ten years. Each day that any such violation continues shall be deemed a separate offense.

(b)(1) In the event of natural calamity, riot, insurrection, war, or other emergency conditions occurring in any State whether caused by acts of nature or of man, the Comptroller of the Currency may designate by proclamation any day a legal holiday for the national banking associations located in that State. In the event that the emergency conditions affect only part of a State, the Comptroller of the Currency may designate the part so affected and may proclaim a legal holiday for the national banking associations located in that affected part. In the event that a State or a State official authorized by law designates any day as a legal holiday for ceremonial or emergency reasons, for the State or any part thereof, that same day shall be a legal holiday for all national banking associations or their offices located in that State or the part so affected. A national banking association

or its affected offices may close or remain open on such a State-designated holiday unless the Comptroller of the Currency by written order directs otherwise.

(2) For the purpose of this subsection, the term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.

(Mar. 9, 1933, ch. 1, title I, § 4, 48 Stat. 2; Pub. L. 96-221, title VII, § 705, Mar. 31, 1980, 94 Stat. 187; Pub. L. 97-320, title IV, § 407, Oct. 15, 1982, 96 Stat. 1513; Pub. L. 97-457, § 21, Jan. 12, 1983, 96 Stat. 2509.)

AMENDMENTS

1983—Subsec. (b)(1). Pub. L. 97-457 inserted "a State or" before "a State official".

1982—Subsec. (b)(1). Pub. L. 97-320 substituted "In the event that a State official authorized by law designates any day as a legal holiday for ceremonial or emergency reasons, for the State or any part thereof, that same day shall be a legal holiday for all national banking associations or their offices located in that State or the part so affected. A national banking association or its affected offices may close or remain open on such a State-designated holiday unless the Comptroller of the Currency by written order directs otherwise" for "In the event that a State or a State official authorized by law designates any day as a legal holiday for either emergency or ceremonial reasons for all banks chartered by that State to do business within that State, that same day shall be a legal holiday for all national banking associations chartered to do business within that State unless the Comptroller of the Currency shall by written order permit all national banking associations located in that State to remain open".

1980—Pub. L. 96-221 designated existing provisions as subsec. (a) and added subsec. (b).

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

BANK HOLIDAY OF 1933

Proclamations Nos. 2039, 2040, and 2070, dated Mar. 6, 1933, Mar. 9, 1933, and Dec. 30, 1933, respectively, related to the temporary suspension of banking transactions beginning Mar. 6, 1933, by all member banks of the Federal Reserve System.

Pursuant to Ex. Ord. No. 6073, dated March 10, 1933, formerly set out as a note under this section, the Secretary of the Treasury by order of March 11, 1933, authorized all Federal reserve banks and nonmember banks and other banking institutions to resume their normal and usual banking functions on March 13, 1933, subject to certain restrictions. See 31 C.F.R. 121.20-121.22. The fifth and sixth paragraphs of Ex. Ord. No. 6073, relating to the removal of gold coin, gold bullion, or gold certificates from the United States by corporations, etc., including banking institutions and authorization of banking institutions to pay out gold coin, gold bullion or gold certificates, were revoked by Ex. Ord. No. 11825, Dec. 31, 1974, 40 F.R. 1003, set out as a note under section 95a of this title.

PROC. NO. 2725. EXEMPTION OF MEMBER BANKS OF FEDERAL RESERVE SYSTEM

Proc. No. 2725, Apr. 7, 1947, 12 F.R. 2343, 61 Stat. 1062, provided:

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, acting under and

by virtue of the authority vested in me by section 5(b) of the Trading with the Enemy Act of October 6, 1917, 40 Stat. 415, as amended [section 5(b) of Appendix to Title 50], and section 4 of the act of March 9, 1933, 48 Stat. 2 [this section] and by virtue of all other authority vested in me, do hereby, in the interest of the internal management of the Government, proclaim, order, direct, and declare that the said proclamations of March 6 and March 9, 1933, and Executive order of March 10, 1933, as amended, are further amended to exclude from their scope banking institutions which are members of the Federal Reserve System: *Provided, however*, That no banking institution shall pay out any gold coin, gold bullion, or gold certificates, except as authorized by the Secretary of the Treasury, or allow the withdrawal of any currency for hoarding.

This proclamation shall become effective as of March 15, 1947.

§ 95a. Regulation of transactions in foreign exchange of gold and silver; property transfers; vested interests, enforcement and penalties

(1) During the time of war, the President may, through any agency that he may designate, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or

if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this section or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this section, or any rule, regulation, instruction, or direction issued hereunder.

(3) As used in this subdivision the term “United States” means the United States and any place subject to the jurisdiction thereof; *Provided, however*, That the foregoing shall not be construed as a limitation upon the power of the President, which is hereby conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision, for any or all of the terms used in this subdivision. As used in this subdivision the term “person” means an individual, partnership, association, or corporation.

(4) The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly, the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission, of any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds. The exports exempted from regulation or prohibition by this paragraph do not include those which are otherwise controlled for export under section 2404 of title 50, Appendix, or under section 2405 of title 50, Appendix to the extent that such controls promote the non-proliferation or antiterrorism policies of the United States, or with respect to which acts are prohibited by chapter 37 of title 18.

(Oct. 6, 1917, ch. 106, §5(b), 40 Stat. 415; Sept. 24, 1918, ch. 176, §5, 40 Stat. 966; Mar. 9, 1933, ch. 1, title I, §2, 48 Stat. 1; May 7, 1940, ch. 185, §1, 54 Stat. 179; Dec. 18, 1941, ch. 593, title III, §301, 55 Stat. 839; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 69 Stat. 1352; Pub. L. 95-223, title I, §§101(a), 102, 103(b), Dec. 28, 1977, 91 Stat. 1625, 1626; Pub. L. 100-418, title II, §2502(a)(1), Aug. 23, 1988, 102 Stat. 1371; Pub. L. 103-236, title V, §525(b)(1), Apr. 30, 1994, 108 Stat. 474.)

CODIFICATION

Section 5(b) of act Oct. 6, 1917, is part of the Trading with the Enemy Act and is also classified to section 5(b) of the Appendix to Title 50, War and National Defense.

Words “, including the Philippine Islands, and the several courts of first instance of the Commonwealth of the Philippine Islands shall have jurisdiction in all cases, civil or criminal, arising under this section in the Philippine Islands and concurrent jurisdiction with the district courts of the United States of all cases,

civil or criminal, arising upon the high seas" following "to the jurisdiction thereof:" in subsec. (3) were omitted on authority of 1946 Proc. No. 2695, which granted the Philippine Islands independence, and which was issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse. Proc. No. 2695 is set out as a note under section 1394 of Title 22.

AMENDMENTS

1994—Par. (4). Pub. L. 103-236 amended par. (4) generally. Prior to amendment, par. (4) read as follows: "The authority granted to the President in this section does not include the authority to regulate or prohibit, directly or indirectly, the importation from any country, or the exportation to any country, whether commercial or otherwise, of publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, or other informational materials, which are not otherwise controlled for export under section 2404 of title 50, Appendix, or with respect to which no acts are prohibited by chapter 37 of title 18."

1988—Par. (4). Pub. L. 100-418 added par. (4).

1977—Par. (1). Pub. L. 95-223, §§101(a), 102, substituted "During the time of war, the President may, through any agency that he may designate, and under such rules and regulations" for "During the time of war or during any other period of national emergency declared by the President, the President may, through any agency, that he may designate, or otherwise, and under such rules and regulations" in the provisions preceding subpar. (A), and, in the provisions following subpar. (B), struck out "; and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of the subdivision" after "control of such person".

Par. (3). Pub. L. 95-223, §103(b), struck out provisions that whoever willfully violated any of the provisions of this subdivision or of any license, order, rule, or regulation issued thereunder, could be fined not more than \$10,000, or, if a natural person, could be imprisoned for not more than ten years, or both; and that any officer, director, or agent of any corporation who knowingly participated in that violation could be punished by a like fine, imprisonment, or both.

1941—Act Dec. 18, 1941, broadened the powers of the President to take, administer, control, use and liquidate foreign-owned property and added a flexibility of control which enabled the President and the agencies designated by him to cope with the problems surrounding alien property, its ownership or control, on the basis of the particular facts in each case.

1940—Act May 7, 1940, included dealings in evidences of indebtedness or ownership of property in which foreign states, nationals or political subdivisions thereof have an interest.

1933—Act Mar. 9, 1933, amended section generally by, among other things, extending the President's power to any time of war or national emergency, by permitting regulations to be issued by any agency designated by the President, by providing for the furnishing under oath of complete information relative to transactions under this section and by placing sanctions on violations to the extent of a \$10,000 fine or ten years imprisonment.

1918—Act Sept. 24, 1918, inserted provisions relating to the hoarding or melting of gold or silver coin or bullion or currency and to the regulation of transactions in bonds or certificates of indebtedness.

DELEGATION OF POWERS

Delegation of President's powers under this section to Secretary of the Treasury and Alien Property Custodian; and transfer of Alien Property Custodian's powers to Attorney General, see Ex. Ord. Nos. 9095 and 9788, set out as notes under section 6 of the Appendix to Title 50, War and National Defense.

All powers conferred upon President by this section delegated to Secretary of the Treasury by Memorandum of the President dated Feb. 12, 1942, 7 F.R. 1409.

ADMINISTRATION OF EXPORT ADMINISTRATION ACT

For provisions relating to the administration of the Export Administration Act, see Executive Orders set out as notes under section 2403 of Title 50, Appendix, War and National Defense.

LIMITATION ON EXERCISE OF EMERGENCY AUTHORITIES

Section 525(b)(2) of Pub. L. 103-236 provided that: "The authorities conferred upon the President by section 5(b) of the Trading With the Enemy Act [this section], which were being exercised with respect to a country on July 1, 1977, as a result of a national emergency declared by the President before such date, and are being exercised on the date of the enactment of this Act [Apr. 30, 1994], do not include the authority to regulate or prohibit, directly or indirectly, any activity which, under section 5(b)(4) of the Trading With the Enemy Act, as amended by paragraph (1) of this subsection, may not be regulated or prohibited."

Section 2502(a)(2) of Pub. L. 100-418 provided that: "The authorities conferred upon the President by section 5(b) of the Trading With the Enemy Act [this section], which were being exercised with respect to a country on July 1, 1977, as a result of a national emergency declared by the President before such date, and are being exercised on the date of the enactment of this Act [Aug. 23, 1988], do not include the authority to regulate or prohibit, directly or indirectly, any activity which, under section 5(b)(4) of the Trading With the Enemy Act, as added by paragraph (1) of this subsection, may not be regulated or prohibited."

EXTENSION AND TERMINATION OF NATIONAL EMERGENCY POWERS UNDER THE TRADING WITH THE ENEMY ACT

Section 101(b), (c) of Pub. L. 95-223 provided that:

"(b) Notwithstanding the amendment made by subsection (a) [amending par. (1) of this section], the authorities conferred upon the President by section 5(b) of the Trading With the Enemy Act [this section], which were being exercised with respect to a country on July 1, 1977, as a result of a national emergency declared by the President before such date, may continue to be exercised with respect to such country, except that, unless extended, the exercise of such authorities shall terminate (subject to the savings provisions of the second sentence of section 101(a) of the National Emergencies Act [section 1601(a) of Title 50, War and National Defense]) at the end of the two-year period beginning on the date of enactment of the National Emergencies Act [Sept 14, 1976]. The President may extend the exercise of such authorities for one-year periods upon a determination for each such extension that the exercise of such authorities with respect to such country for another year is in the national interest of the United States.

"(c) The termination and extension provisions of subsection (b) of this section supersede the provisions of section 101(a) [section 1601(a) of Title 50, War and National Defense] and of title II [section 1621 et seq. of Title 50] of the National Emergencies Act to the extent that the provisions of subsection (b) of this section are inconsistent with those provisions."

REMOVAL OF LIMITATIONS AND RESTRAINTS IN FINANCING EXPORTS

Pub. L. 92-126, §2, Aug. 17, 1971, 85 Stat. 346, provided that: "In connection with section 2 of Executive Order Number 11387, dated January 1, 1968 [formerly set out below] and any rule, regulation, or guideline established by the Board of Governors of the Federal Reserve System in connection with a voluntary foreign credit restraint program, there shall be no limitation or restraint, or suggestion that there be a limitation or restraint, on the part of any bank or financial institution in connection with the extension of credit for the purpose of financing exports of the United States."

WORLD WAR II ALIEN PROPERTY CUSTODIAN

Reestablishment and termination of Office of Alien Property Custodian during World War II, see notes

under section 6 of the Appendix to Title 50, War and National Defense.

DIPLOMATIC PROPERTY OF GERMANY AND JAPAN

Ex. Ord. No. 9760, July 24, 1946, 11 F.R. 7999, set out in notes to section 6 of Title 50, Appendix, War and National Defense, supersedes conflicting provisions of Ex. Ord. No. 8389, set out below.

EXECUTIVE ORDER No. 6260

Ex. Ord. No. 6260, Aug. 28, 1933, as amended by Ex. Ord. No. 6359, Oct. 25, 1933; Ex. Ord. No. 6556, Jan. 12, 1934; Ex. Ord. No. 6560, Jan. 15, 1934; Ex. Ord. No. 10896, Nov. 29, 1960, 25 F.R. 12281; Ex. Ord. No. 10905, Jan. 14, 1961, 26 F.R. 321; Ex. Ord. No. 11037, July 20, 1962, 27 F.R. 6967, formerly set out as a note under this section, which related to the hoarding, export, and earmarking of gold coin, bullion, or currency, and transactions in foreign exchange, was revoked by Ex. Ord. No. 11825, Dec. 31, 1974, 40 F.R. 1003, set out below.

EXECUTIVE ORDER No. 6560

Ex. Ord. No. 6560, Jan. 15, 1934, as amended by Ex. Ord. No. 8389, April 10, 1940, 6 p.m. E. S. T., 5 F.R. 1400; Ex. Ord. No. 8405, May 10, 1940, 7:55 a.m. E. S. T., 5 F.R. 1677; Ex. Ord. No. 8493, July 25, 1940, 5 F.R. 2667, formerly set out as a note under this section, which declared the existence of a national emergency and prescribed regulations for the investigation, regulation, and prohibition of transactions in foreign exchange, transfers of credit between or payments by banking institutions, and export of currency or silver coin by persons within the United States or subject to its jurisdiction, was based on authority of section 95a of this title (act Oct. 6, 1917, ch. 106, §5(b), 40 Stat. 415, comprising part of the Trading With the Enemy Act) which was amended in 1977 to remove the powers of the President to regulate transactions during a period of national emergency other than a war.

EX. ORD. NO. 8389. REGULATING TRANSACTIONS IN FOREIGN EXCHANGE AND FOREIGN-OWNED PROPERTY, PROVIDING FOR THE REPORTING OF ALL FOREIGN-OWNED PROPERTY

Ex. Ord. No. 8389, Apr. 10, 1940, 5 F.R. 1400, as amended by Ex. Ord. No. 8405, May 10, 1940, 5 F.R. 1677; Ex. Ord. No. 8446, June 17, 1940, 5 F.R. 2279; Ex. Ord. No. 8484, July 15, 1940, 5 F.R. 2586; Ex. Ord. No. 8493, July 25, 1940, 5 F.R. 2667; Ex. Ord. No. 8565, Oct. 10, 1940, 5 F.R. 4062; Ex. Ord. No. 8701, Mar. 4, 1941, 6 F.R. 1285; Ex. Ord. No. 8711, Mar. 13, 1941, 6 F.R. 1443; Ex. Ord. No. 8721, Mar. 24, 1941, 6 F.R. 1622; Ex. Ord. No. 8746, Apr. 28, 1941, 6 F.R. 2187; Ex. Ord. No. 8785, June 14, 1941, 6 F.R. 2897; Ex. Ord. No. 8832, July 26, 1941, 6 F.R. 3715; Ex. Ord. No. 8963, Dec. 9, 1941, 6 F.R. 6348; Ex. Ord. No. 8998, Dec. 26, 1941, 6 F.R. 6787, provided:

SECTION 1. CERTAIN FOREIGN BANKING TRANSACTIONS PROHIBITED

All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise, if (i) such transactions are by, or on behalf of, or pursuant to the direction of any foreign country designated in this Order, or any national thereof, or (ii) such transactions involve property in which any foreign country designated in this Order, or any national thereof, has at any time on or since the effective date of this Order had any interest of any nature whatsoever, direct or indirect:

A. All transfers of credit between any banking institutions within the United States; and all transfers of credit between any banking institution within the United States and any banking institution outside the United States (including any principal, agent, home office, branch, or correspondent outside the United States, of a banking institution within the United States);

B. All payments by or to any banking institution within the United States;

C. All transactions in foreign exchange by any person within the United States;

D. The export or withdrawal from the United States, or the earmarking of gold or silver coin or bullion or currency by any person within the United States;

E. All transfers, withdrawals or exportations of, or dealings in, any evidences of indebtedness or evidences of ownership of property by any person within the United States; and

F. Any transaction for the purpose or which has the effect of evading or avoiding the foregoing prohibitions.

SECTION 2. DEALINGS IN FOREIGN SECURITIES; REGULATIONS

A. All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise:

(1) The acquisition, disposition or transfer of, or other dealing in, or with respect to, any security or evidence thereof on which there is stamped or imprinted, or to which there is affixed or otherwise attached, a tax stamp or other stamp of a foreign country designated in this Order or a notarial or similar seal which by its contents indicates that it was stamped, imprinted, affixed or attached within such foreign country, or where the attendant circumstances disclose or indicate that such stamp or seal may, at any time, have been stamped, imprinted, affixed or attached thereto; and

(2) The acquisition by, or transfer to, any person within the United States of any interest in any security or evidence thereof if the attendant circumstances disclose or indicate that the security or evidence thereof is not physically situated within the United States.

B. The Secretary of the Treasury may investigate, regulate, or prohibit under such regulations, rulings, or instructions as he may prescribe, by means of licenses or otherwise, the sending, mailing, importing or otherwise bringing, directly or indirectly, into the United States, from any foreign country, of any securities or evidences thereof or the receiving or holding in the United States of any securities or evidences thereof so brought into the United States.

SECTION 3. FOREIGN COUNTRIES AFFECTED; EFFECTIVE DATE OF PROHIBITIONS

The term "foreign country designated in this Order" means a foreign country included in the following schedule, and the term "effective date of this Order" means with respect to any such foreign country, or any national thereof, the date specified in the following schedule:

- (a) April 8, 1940—
Norway and
Denmark;
- (b) May 10, 1940—
The Netherlands,
Belgium and
Luxembourg;
- (c) June 17, 1940—
France (including Monaco);
- (d) July 10, 1940—
Latvia, Estonia and
Lithuania;
- (e) October 9, 1940—
Rumania;
- (f) March 4, 1941—
Bulgaria;
- (g) March 13, 1941—
Hungary;
- (h) March 24, 1941—
Yugoslavia;
- (i) April 28, 1941—
Greece; and
- (j) June 14, 1941—
Albania,
Andorra,
Austria,
Czechoslovakia,

- Danzig,
Finland,
Germany,
Italy,
Liechtenstein,
Poland,
Portugal,
San Marino,
Spain,
Sweden,
Switzerland, and
Union of Soviet Socialist Republics;
- (k) June 14, 1941—
China and
Japan;
- (l) June 14, 1941—
Thailand;
- (m) June 14, 1941—
Hong Kong.

The “effective date of this Order” with respect to any foreign country not designated in this Order shall be deemed to be June 14, 1941.

SECTION 4. RECORDS OF FOREIGN BANKING AND SECURITY TRANSACTIONS; INVESTIGATIONS

A. The Secretary of the Treasury and/or the Attorney General may require, by means of regulations, rulings, instructions, or otherwise, any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, from time to time and at any time or times, complete information relative to, any transaction referred to in section 5(b) of the Act of October 6, 1917 (40 Stat. 415) [this section], as amended, or relative to any property in which any foreign country or any national thereof has any interest of any nature whatsoever, direct or indirect, including the production of any books of account, contracts, letters, or other papers, in connection therewith, in the custody or control of such person, either before or after such transaction is completed; and the Secretary of the Treasury and/or the Attorney General may, through any agency, investigate any such transaction or act, or any violation of the provisions of this Order.

B. Every person engaging in any of the transactions referred to in sections 1 and 2 of this Order shall keep a full record of each such transaction engaged in by him, regardless of whether such transaction is effected pursuant to license or otherwise, and such record shall be available for examination for at least one year after the date of such transaction.

SECTION 5. DEFINITIONS

A. As used in the first paragraph of section 1 of this Order “transactions (which) involve property in which any foreign country designated in this Order, or any national thereof, has * * * any interest of any nature whatsoever, direct or indirect,” shall include but not by way of limitation (i) any payment or transfer to any such foreign country or national thereof, (ii) any export or withdrawal from the United States to such foreign country, and (iii) any transfer of credit, or payment of an obligation, expressed in terms of the currency of such foreign country.

B. The term “United States” means the United States and any place subject to the jurisdiction thereof, and the term “continental United States” means the States of the United States, the District of Columbia, and the Territory of Alaska: *Provided, however*, That for the purposes of this Order the term “United States” shall not be deemed to include any territory included within the term “foreign country” as defined in paragraph D of this section.

C. The term “person” means an individual, partnership, association, corporation, or other organization.

D. The term “foreign country” shall include, but not by way of limitation,

(i) The state and the government thereof on the effective date of this Order as well as any political subdivision, agency, or instrumentality thereof or any terri-

tory, dependency, colony, protectorate, mandate, dominion, possession or place subject to the jurisdiction thereof.

(ii) Any other government (including any political subdivision, agency, or instrumentality thereof) to the extent and only to the extent that such government exercises or claims to exercise *de jure* or *de facto* sovereignty over the area which on such effective date constituted such foreign country, and

(iii) Any territory which on or since the effective date of this Order is controlled or occupied by the military, naval or police forces or other authority of such foreign country;

(iv) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since such effective date, acting or purporting to act directly or indirectly for the benefit or on behalf of any of the foregoing. Hong Kong shall be deemed to be a foreign country within the meaning of this subdivision.

E. The term “national” shall include,

(i) Any person who has been domiciled in, or a subject, citizen or resident of a foreign country at any time on or since the effective date of this Order,

(ii) Any partnership, association, corporation or other organization, organized under the laws of, or which on or since the effective date of this Order had or has had its principal place of business in such foreign country, or which on or since such effective date was or has been controlled by, or a substantial part of the stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of which, was or has been owned or controlled by, directly or indirectly, such foreign country and/or one or more nationals thereof as herein defined.

(iii) Any person to the extent that such person is, or has been, since such effective date, acting or purporting to act directly or indirectly for the benefit or on behalf of any national of such foreign country, and

(iv) Any other person who there is reasonable cause to believe is a “national” as herein defined.

In any case in which by virtue of the foregoing definition a person is a national of more than one foreign country, such person shall be deemed to be a national of each such foreign country. In any case in which the combined interests of two or more foreign countries designated in this Order and/or nationals thereof are sufficient in the aggregate to constitute, within the meaning of the foregoing, control of 25 per centum or more of the stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of a partnership, association, corporation or other organization, but such control or a substantial part of such stock, shares, bonds, debentures, notes, drafts, or other securities or obligations is not held by any one such foreign country and/or national thereof, such partnership, association, corporation or other organization shall be deemed to be a national of each of such foreign countries. The Secretary of the Treasury shall have full power to determine that any person is or shall be deemed to be a “national” within the meaning of this definition, and the foreign country of which such person is or shall be deemed to be a national. Without limitation of the foregoing, the term “national” shall also include any other person who is determined by the Secretary of the Treasury to be, or to have been, since such effective date, acting or purporting to act directly or indirectly for the benefit or under the direction of a foreign country designated in this Order or national thereof, as herein defined.

F. The term “banking institution” as used in this Order shall include any person engaged primarily or incidentally in the business of banking, of granting or transferring credits, or of purchasing or selling foreign exchange or procuring purchasers and sellers thereof, as principal or agent, or any person holding credits for others as a direct or incidental part of his business, or brokers, and each principal, agent, home office, branch or correspondent of any person so engaged shall be regarded as a separate “banking institution”.

G. The term "this Order", as used herein, shall mean Executive Order No. 8389 of April 10, 1940, as amended.

SECTION 6. CONSTRUCTION WITH EX. ORD. NO. 6560; SAVING CLAUSE

Executive Order No. 8389 of April 10, 1940, as amended, shall no longer be deemed to be an amendment to or a part of Executive Order No. 6560 of January 15, 1934. Executive Order No. 6560 of January 15, 1934, and the Regulations of November 12, 1934, are hereby modified in so far as they are inconsistent with the provisions of this Order, and except as so modified, continue in full force and effect. Nothing herein shall be deemed to revoke any license, ruling, or instruction now in effect and issued pursuant to Executive Order No. 6560 of January 15, 1934, as amended, or pursuant to this Order; provided, however, that all such licenses, rulings, or instructions shall be subject to the provisions hereof. Any amendment, modification or revocation by or pursuant to the provisions of this Order of any orders, regulations, rulings, instructions or licenses shall not affect any act done, or any suit or proceeding had or commenced in any civil or criminal case prior to such amendment, modification or revocation, and all penalties, forfeitures and liabilities under any such orders, regulations, rulings, instructions or licenses shall continue and may be enforced as if such amendment, modification or revocation had not been made.

SECTION 7. REGULATIONS BY SECRETARY OF THE TREASURY

Without limitation as to any other powers or authority of the Secretary of the Treasury or the Attorney General under any other provision of this Order, the Secretary of the Treasury is authorized and empowered to prescribe from time to time regulations, rulings, and instructions to carry out the purposes of this Order and to provide therein or otherwise the conditions under which licenses may be granted by or through such officers or agencies as the Secretary of the Treasury may designate, and the decision of the Secretary with respect to the granting, denial or other disposition of an application or license shall be final.

SECTION 8. OFFENSES AND PENALTIES UNDER ACT OCT. 6, 1917

Section 5(b) of the Act of October 6, 1917, as amended, provides in part:

"* * * Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than \$10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both."

SECTION 9. AMENDMENTS OF ORDER AND REGULATIONS PRESCRIBED THEREUNDER

This Order and any regulations, rulings, licenses or instructions issued hereunder may be amended, modified or revoked at any time.

[Ex. Ord. No. 8389 and the regulations and general rulings issued thereunder by the Secretary of the Treasury were approved and confirmed by Res. May 7, 1940, ch. 185, §2, 54 Stat. 179.]

[Ex. Ord. No. 9760, July 24, 1946, 11 F.R. 7999, 50 U.S.C. App., §6 note, relating to diplomatic property of Germany and Japan in the United States, supersedes conflicting provisions of Ex. Ord. No. 8389, set out above.]

EXECUTIVE ORDERS NOS. 8446, 8484, 8565, 8701, 8711, 8721, 8746

The application of Ex. Ord. No. 6560, §§9 to 14, to French property by Ex. Ord. No. 8446, 5 F.R. 2279; to Latvian, Estonian and Lithuanian property by Ex. Ord. No. 8484, 5 F.R. 2586; to Rumanian property by Ex. Ord. No. 8565, 5 F.R. 4062; to Hungarian property by Ex. Ord. No. 8701, 6 F.R. 1285; to Hungarian property by Ex. Ord. No. 8711, 6 F.R. 1443; to Yugoslav property by Ex. Ord.

No. 8721, 6 F.R. 1622; to Greek property by Ex. Ord. No. 8746, 6 F.R. 2187, was incorporated in the provisions of Ex. Ord. No. 8389 as amended by Ex. Ord. No. 8785, set out above.

EX. ORD. NO. 9747. FUNCTIONS OF ALIEN PROPERTY CUSTODIAN AND TREASURY DEPARTMENT CONTINUED IN PHILIPPINES

Ex. Ord. No. 9747, July 3, 1946, 11 F.R. 7518, provided: The terms and provisions of Executive Order 9095 of March 11, 1942, as amended [formerly set out as a note under section 6 of the Appendix to Title 50, War and National Defense], and Executive Order No. 8389 of April 10, 1940, as amended [set out above], shall continue in force in the Philippines after July 4, 1946, and all powers and authority delegated by the said Executive Orders to the Alien Property Custodian and to the Secretary of the Treasury, respectively, shall after July 4, 1946, continue to be exercised in the Philippines by the said officers, respectively, as therein provided.

EXECUTIVE ORDER NO. 10348

Ex. Ord. No. 10348, Apr. 26, 1952, 17 F.R. 3769, which provided that Ex. Ord. No. 8389, Apr. 10, 1940, 5 F.R. 1400, as amended, set out above, and all delegations, designations, regulations, rulings, instructions, and licenses issued under such order, should be continued in force according to their terms for the duration of the period of the national emergency proclaimed by Proclamation No. 2914 of December 16, 1950, set out as a note preceding section 1 of the Appendix to Title 50, War and National Defense, was superseded by Ex. Ord. No. 11281, May 13, 1966, 31 F.R. 7215, set out as a note under section 6 of the Appendix to Title 50.

EXECUTIVE ORDER NO. 11387

Ex. Ord. No. 11387, Jan. 1, 1968, 33 F.R. 47, which prohibited transfers of capital to or within a foreign country or to any national thereof outside the United States by a person subject to the jurisdiction of the United States who owns a 10 percent interest in a foreign business venture, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

EX. ORD. NO. 11825. REVOCATION OF EXECUTIVE ORDERS PERTAINING TO REGULATION OF ACQUISITION OF, HOLDING OF, OR OTHER TRANSACTIONS IN GOLD

Ex. Ord. No. 11825, Dec. 31, 1974, 40 F.R. 1003, provided: By virtue of the authority vested in me by section 1 of the Act of August 8, 1950, 64 Stat. 419, and section 5(b) of the Act of October 6, 1917, as amended (12 U.S.C. 95a) [this section], and as President of the United States, and in view of the provisions of section 3 of Public Law 93-110, 87 Stat. 352, as amended by section 2 of Public Law 93-373, 88 Stat. 445, [set out as notes under section 442 of former Title 31, Money and Finance], it is ordered as follows:

SECTION 1. Executive Order No. 6260 of August 28, 1933, as amended by Executive Order No. 6359 of October 25, 1933, Executive Order No. 6556 of January 12, 1934, Executive Order No. 6560 of January 15, 1934, Executive Order No. 10896 of November 29, 1960, Executive Order No. 10905 of January 14, 1961, and Executive Order No. 11037 of July 20, 1962; the fifth and sixth paragraphs of Executive Order No. 6073, March 10, 1933 [formerly set out as a note under section 95 of this title]; sections 3 and 4 of Executive Order No. 6359 of October 25, 1933 [formerly set out as a note under section 248 of this title]; and paragraph 2(d) of Executive Order No. 10289 of September 17, 1951 [set out as a note under section 301 of Title 3, The President], are hereby revoked.

SECTION 2. The revocation, in whole or in part, of such prior Executive orders relating to regulation on the acquisition of, holding of, or other transactions in gold shall not affect any act completed, or any right accruing or accrued, or any suit or proceeding finished or started in any civil or criminal cause prior to the revocation, but all such liabilities, penalties, and forfeitures under the Executive orders shall continue and

may be enforced in the same manner as if the revocation had not been made.

This order shall become effective on December 31, 1974.

GERALD R. FORD.

§ 95b. Ratification of acts of President and Secretary of the Treasury under section 95a

The actions, regulations, rules, licenses, orders and proclamations heretofore or hereafter taken, promulgated, made, or issued by the President of the United States or the Secretary of the Treasury since March 4, 1933, pursuant to the authority conferred by section 95a of this title, are approved and confirmed.

(Mar. 9, 1933, ch. 1, title I, § 1, 48 Stat. 1.)

CODIFICATION

This section is also set out as a note under section 5 of Title 50, Appendix, War and National Defense.

SUBCHAPTER V—OBTAINING AND ISSUING CIRCULATING NOTES

§§ 101 to 110. Repealed. Pub. L. 103-325, title VI, § 602(e)(5)–(11), (f)(2)–(4)(A), (g)(9), Sept. 23, 1994, 108 Stat. 2292, 2294

Section 101, acts Mar. 14, 1900, ch. 41, § 12, 31 Stat. 49; Oct. 5, 1917, ch. 74, § 2, 40 Stat. 342, provided for delivery of circulating notes in blank to national banking associations depositing bonds with Treasurer of United States.

Section 101a, R.S. § 5159; Dec. 23, 1913, ch. 6, § 17, 38 Stat. 268; June 21, 1917, ch. 32, § 9, 40 Stat. 239, related to deposit of bonds to secure circulating notes.

Section 102, R.S. § 5158, construed term “United States bonds” as including registered bonds.

Section 103, act Oct. 5, 1917, ch. 74, § 3, 40 Stat. 342, related to denominations of notes and limitation on amount of \$1 and \$2 notes.

Section 104, R.S. § 5172; May 30, 1908, ch. 229, § 11, 35 Stat. 551; Dec. 23, 1913, ch. 6, § 27, 38 Stat. 274; Aug. 4, 1914, ch. 225, 38 Stat. 682; Mar. 3, 1919, ch. 101, § 4, 40 Stat. 1315, related to printing and form of circulating notes.

Section 105, act June 20, 1874, ch. 343, § 5, 18 Stat. 124, provided that Comptroller of Currency was to print charter numbers of association on national bank notes.

Section 106, act Mar. 3, 1875, ch. 130, § 1, 18 Stat. 372, provided for printing national-bank notes on distinctive paper adopted by Secretary of the Treasury.

Section 107, R.S. § 5173, related to custody of plates and dies procured for printing notes and payment of expenses.

Section 108, R.S. § 5174; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 252, related to examination of plates, dies, and other material from which national-bank circulation was printed, and destruction of obsolete material.

Section 109, R.S. § 5182; Jan. 13, 1920, ch. 38, 41 Stat. 387, provided that banks could issue and circulate notes the same as money if signed by officers in manner of obligatory promissory notes payable on demand at place of business, and specified demands for which such notes were to be received.

Section 110, R.S. § 5183; Feb. 18, 1875, ch. 80, § 1, 18 Stat. 320, prohibited banks from issuing unauthorized notes.

SUBCHAPTER VI—REDEMPTION AND REPLACEMENT OF CIRCULATING NOTES

§ 121. Repealed. Pub. L. 103-325, title VI, § 602(f)(4)(B), Sept. 23, 1994, 108 Stat. 2292

Section, acts June 20, 1874, ch. 343, § 3, 18 Stat. 123; Dec. 23, 1913, ch. 6, § 20, 38 Stat. 271; May 29, 1920, ch. 214,

§ 1, 41 Stat. 654, provided that every national banking association was to establish reserve in Treasury for redemption of notes by Treasurer of United States, forward notes unfit for use to Treasurer for disposition, and reimburse expenses of Treasury.

§ 121a. Redemption of notes unidentifiable as to bank of issue

Whenever any Federal Reserve bank notes or Federal Reserve notes are presented to the Treasurer of the United States for redemption and such notes cannot be identified as to the bank of issue or the bank through which issued, the Treasurer of the United States may redeem such notes under such rules and regulations as the Secretary of the Treasury may prescribe.

(June 13, 1933, ch. 62, § 1, 48 Stat. 127; Pub. L. 89-427, § 4(a), May 20, 1966, 80 Stat. 161; Pub. L. 103-325, title VI, § 602(g)(8)(A), Sept. 23, 1994, 108 Stat. 2294.)

AMENDMENTS

1994—Pub. L. 103-325, § 602(g)(8)(A)(ii), which directed the amendment of this section by striking out “, and the notes, other than Federal Reserve notes, so redeemed shall be forwarded to the Comptroller of the Currency for cancellation and destruction” after “Treasury may prescribe”, was executed by striking out text which contained the word “Reserves” rather than “Reserve”, to reflect the probable intent of Congress.

Pub. L. 103-325, § 602(g)(8)(A)(i), substituted “Whenever any Federal Reserve bank notes,” for “Whenever any national-bank notes, Federal Reserve bank notes.”.

1966—Pub. L. 89-427 excepted Federal Reserve notes from the category of notes which, upon redemption by the Treasurer of the United States, must be forwarded to the Comptroller of the Currency for cancellation and destruction.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of the Treasury, see note set out under section 55 of this title.

§ 122. Repealed. Pub. L. 97-258, § 5(b), Sept. 13, 1982, 96 Stat. 1068

Section, act July 14, 1890, ch. 708, § 6, 26 Stat. 289, related to deposits received by the Treasurer from national banks made to redeem circulating notes of such banks and disposition of those deposits.

§ 122a. Redeemed notes of nonidentifiable issue; funds charged against

Federal Reserve bank notes redeemed by the Treasurer of the United States under section 121a of this title shall be charged against the balance of deposits for the retirement of Federal Reserve bank notes under the provisions of sections 122 and 445¹ of this title; and charges for Federal Reserve notes redeemed by the Treasurer of the United States under section 121a of this title shall be apportioned among the twelve Federal Reserve banks as determined by the Board of Governors of the Federal Reserve System.

(June 13, 1933, ch. 62, § 2, 48 Stat. 128; Pub. L. 89-427, § 4(b), May 20, 1966, 80 Stat. 161; Pub. L. 103-325, title VI, § 602(g)(8)(B), Sept. 23, 1994, 108 Stat. 2294.)

¹ See References in Text note below.